

## **Assembly Bill No. 457**

### **CHAPTER 281**

An act to amend Sections 44010 44332, 44346.1, and 44424 of the Education Code, relating to school employees.

[Approved by Governor August 31, 1999. Filed with  
Secretary of State September 1, 1999.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 457, Scott. School employees: sex offense: definition.

(1) Existing law requires the Commission on Teacher Credentialing to deny any application for the issuance of a credential made by an applicant who has been convicted of a violent or serious felony, as defined.

This bill would also require the commission to deny any application for the issuance of a credential made by an applicant that has been convicted of one of the offenses that would require revocation of a credential.

(2) Existing law defines "sex offense" for purposes of various provisions relating to the employment of school employees including, among others, provisions that prohibit school districts from employing or retaining in employment persons in public school service who have been convicted of, or who have been convicted following a plea of nolo contendere to charges of, a sex offense and require a school district and county office of education to immediately place upon compulsory leave of absence an employee who is charged with a sex offense. Among the offenses constituting a sex offense are the sexual exploitation of a child and the employment or use of a minor to perform prohibited sexual acts.

This bill would add to the offenses constituting a sex offense other offenses relating to the depiction of a minor personally engaging in or personally simulating sexual conduct, as defined. By adding these offenses to those offenses defined as a sex offense, the bill would prohibit a school district from employing or retaining in employment persons in public school service who have been convicted of, or who have been convicted following a plea of nolo contendere to charges of, an offense added by this bill to those defined as a sex offense and require a school district and county office of education to immediately place upon compulsory leave of absence an employee who is charged with an offense added by this bill to those defined as a sex offense, thereby imposing a state-mandated local program.

(3) Existing law authorizes a county or city and county board of education, except where that service is provided by a school district authorized to register certification documents, to issue temporary

certificates for the purpose of authorizing salary payments to certified employees whose credential applications are being processed or to personnel employed in children's centers or other preschool educational programs whose permit applications are being processed.

This bill would prohibit a county or city and county board of education from issuing a temporary certificate to an applicant whose teaching credential is revoked or suspended.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

*The people of the State of California do enact as follows:*

SECTION 1. Section 44010 of the Education Code is amended to read:

44010. "Sex offense," as used in Sections 44020, 44237, 44346, 44425, 44436, 44836, 45123, and 45304, means any one or more of the offenses listed below:

(a) Any offense defined in Section 220, 261, 261.5, 262, 264.1, 266, 266j, 267, 285, 286, 288, 288a, 289, 311.1, 311.2, 311.3, 311.4, 311.10, 311.11, 313.1, 647b, 647.6, or former Section 647a, subdivision (a), (b), or (c) of Section 243.4, or subdivision (a) or (d) of Section 647 of the Penal Code.

(b) Any offense defined in former subdivision (5) of former Section 647 of the Penal Code repealed by Chapter 560 of the Statutes of 1961, or any offense defined in former subdivision (2) of former Section 311 of the Penal Code repealed by Chapter 2147 of the Statutes of 1961, if the offense defined in those sections was committed prior to September 15, 1961, to the same extent that an offense committed prior to that date was a sex offense for the purposes of this section prior to September 15, 1961.

(c) Any offense defined in Section 314 of the Penal Code committed on or after September 15, 1961.

(d) Any offense defined in former subdivision (1) of former Section 311 of the Penal Code repealed by Chapter 2147 of the Statutes of 1961 committed on or after September 7, 1955, and prior to September 15, 1961.



(e) Any offense involving lewd and lascivious conduct under Section 272 of the Penal Code committed on or after September 15, 1961.

(f) Any offense involving lewd and lascivious conduct under former Section 702 of the Welfare and Institutions Code repealed by Chapter 1616 of the Statutes of 1961, if that offense was committed prior to September 15, 1961, to the same extent that an offense committed prior to that date was a sex offense for the purposes of this section prior to September 15, 1961.

(g) Any offense defined in Section 286 or 288a of the Penal Code prior to the effective date of the amendment of either section enacted at the 1975–76 Regular Session of the Legislature committed prior to the effective date of the amendment.

(h) Any attempt to commit any of the above-mentioned offenses.

(i) Any offense committed or attempted in any other state which, if committed or attempted in this state, would have been punishable as one or more of the above-mentioned offenses.

(j) Any conviction for an offense resulting in the requirement to register as a sex offender pursuant to Section 290 of the Penal Code.

(k) Commitment as a mentally disordered sex offender under former Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of the Welfare and Institutions Code, as repealed by Chapter 928 of the Statutes of 1981.

SEC. 2. Section 44332 of the Education Code is amended to read:

44332. (a) Except where that service is provided by a school district authorized to register certification documents pursuant to Section 44332.5, each county or city and county board of education may issue temporary certificates for the purpose of authorizing salary payments to certified employees whose credential applications are being processed or to personnel employed in children's centers or other preschool educational programs whose permit applications are being processed. However, the individual must have demonstrated proficiency in basic reading, writing, and mathematic skills pursuant to the requirements of Section 44252.5. The applicant for the temporary certificate shall make a statement under oath that he or she has duly filed an application for a credential or permit together with the required fee and that, to the best of his or her knowledge, no reason exists why a certificate or permit should not be issued. The certificate or permit shall be valid for not more than one calendar year from the date of issuance.

(b) The county or city and county board of education shall cancel the temporary certificate or permit immediately upon receipt of certification in writing from the commission that the applicant apparently does not possess adequate academic qualifications or apparently has a criminal record that would disqualify the applicant.

(c) A temporary certificate issued to a permit applicant is not valid beyond the time that the commission either issues or denies the

originally requested permit. A temporary certificate issued to a credential applicant is not valid beyond the time that the commission provides written notification to the county or city and county board of education that the applicant apparently does not possess adequate qualifications, that the commission has received facts that may cause denial of the application, or issues or denies the originally requested credential.

(d) A county or city and county board of education may not issue a temporary certificate to an applicant whose teaching credential is revoked or suspended.

SEC. 3. Section 44346.1 of the Education Code is amended to read:

44346.1. (a) The commission shall deny any application for the issuance of a credential made by an applicant who has been convicted of a violent or serious felony or a crime set forth in subdivision (a) of Section 44424 or whose employment has been denied or terminated pursuant to Section 44830.1.

(b) This section applies to any violent or serious offense which, if committed in this state, would have been punishable as a violent or serious felony.

(c) For purposes of this section, a violent felony is any felony listed in subdivision (c) of Section 667.5 of the Penal Code and a serious felony is any felony listed in subdivision (c) of Section 1192.7 of the Penal Code.

(d) Notwithstanding subdivision (a), a person shall not be denied a credential solely on the basis that the applicant or holder has been convicted of a violent or serious felony if the person has obtained a certificate of rehabilitation and pardon pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

SEC. 4. Section 44424 of the Education Code is amended to read:

44424. (a) Upon the conviction of the holder of any credential issued by the State Board of Education or the Commission on Teacher Credentialing of a violation, or attempted violation, of a serious or violent felony described in Section 44346.1, or any one or more of Penal Code Sections 187 to 191, 192 insofar as said section relates to voluntary manslaughter, 193, 194 to 217.1, both inclusive, 220, 222, 244, 245, 261 to 267, both inclusive, 273a, 273f, 273g, 278, 285 to 288a, both inclusive, 424, 425, 484 to 488, both inclusive, insofar as said sections relate to felony convictions, 503 and 504, or of Penal Code Section 272, becoming final, the commission shall forthwith revoke the credential.

(b) Upon a plea of nolo contendere that does not constitute a conviction pursuant to Section 1016 of the Penal Code, all credentials held by the respondent shall be suspended until a final disposition regarding those credentials is made by the commission. Any action that the commission is permitted to take following a conviction may

be taken after the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(c) The commission shall revoke a credential issued to a person whose employment has been denied or terminated pursuant to Section 44830.1.

(d) Notwithstanding subdivision (a), a credential shall not be revoked solely on the basis that the applicant or holder has been convicted of a violent or serious felony if the person has obtained a certificate of rehabilitation and pardon pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

SEC. 5. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

